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Supreme Court, U.S.
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No. 94-892

In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

Loralyn McKinley, Esquire, Guardian
Ad Litem for C.W., Petitioner

v.

Delores Wasiek, Respondent

SUGGESTION OF MOOTNESS AND REQUEST FOR VACATUR

Loralyn McKinley
Guardian Ad Litem for C.W
(Counsel of Record)

Community Legal Services, Inc.
1424 Chestnut Street
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(Counsel for Petitioner)

TABLE OF CITATIONS

DeFunis v. Odegaard, 416 U.S. 312 (1974) 1

Garvin v. Cochran, 371 U.S. 27 (1962) 1

Massachusetts v. Oakes, 491 U.S. 572 (1989) 2

Riley v. International Brotherhood of Teamsters, 336 U.S. 930 (1949) 3

United States Bancorp Mortgage Co. v. Bonner Mall Partnership, ___ U.S. ___, 115 S. Ct. 386 (1994) ... 2

United States v. Hamburg-Amerikanische Packetfahrt-Actien Gesselschaft, 239 U.S. 466 (1916) 2

SUGGESTION OF MOOTNESS AND REQUEST FOR VACATUR

Loralyn McKinley, Guardian Ad Litem for C.W., submits this Suggestion of Mootness to the Court for its consideration, and respectfully urges the Court, should it determine that the case is moot, to vacate and dismiss the judgment below. A Petition for Writ of Certiorari was filed with the Court on November 15, 1994 seeking review of an order of the Pennsylvania Superior Court which authorized the surgical sterilization of C.W., who has retardation. The Guardian Ad Litem sought to prevent the sterilization on the ground that the Superior Court's decision contravened C.W's Fourteenth Amendment rights to bodily integrity and procreative autonomy.

On November 10, 1994, prior to the filing of the Petition for Writ of Certiorari, the Guardian Ad Litem filed an Application for Stay of Mandate Pending Petition for Certiorari. Justice David Souter, sitting as Circuit Justice for the Third Judicial Circuit, denied the stay. The next day, November 11, 1994, a Renewed Application for Stay was filed with Justice Ruth Bader Ginsburg, who referred the request to the full Court. By order dated November 28, 1994, the request was denied.

The Guardian Ad Litem was informed by the media on January 5, 1994 that C.W. had been sterilized on December 30, 1994 at an undisclosed location. She received official notification from counsel for the Respondent on January 11, 1994 that the procedure had been performed.

The Petition for Writ of Certiorari raised critical questions

pertaining to C.W.'s constitutional right to privacy. The importance of these issues transcended her individual legal and factual situation, and had implications for thousands of persons with cognitive disabilities, as well as for others who might eventually suffer incapacity and be subject to surrogate medical decisionmaking. It is clear, however, that no matter how the Court might decide the constitutional questions raised by the petition, the specific harm sought to prevented through the petition, the sterilization of C.W., has already come to pass and cannot be undone.

Article III jurisdiction does not lie where there is no live case or controversy between the parties. Where intervening events preclude the Court from rendering a decision with any practical import for the litigants, the Court has considered the case moot and has declared itself without jurisdiction. See eg. DeFunis v. Odegaard, 416 U.S. 312 (1974). Counsel suggest to the Court that the sterilization of C.W. renders moot the issues presented in the Petition for Writ of Certiorari.

Should the Court determine that the case is moot, the Guardian Ad Litem respectfully urges the Court to vacate the decision below and dismiss the case. Vacatur is appropriate when cases emanating from the state courts become moot pending the disposition of a petition for writ of certiorari. See Massachusetts v. Oakes, 491 U.S. 572, 585 (1989). See also Defunis, supra, 416 U.S. at 320 (case mooted by graduation of litigant seeking admission to law school). See also Garvin v. Cochran, 371 U.S. 27 (1962)(case

mooted by death of petitioner); Riley v. International Brotherhood of Teamsters, 336 U.S. 930 (1949). While the Court typically vacates the judgment and remands to the state court for appropriate proceedings, where as here no state or federal claim survives mootness, remand is unnecessary and dismissal is appropriate. Massachusetts v. Oakes, supra, 491 U.S. at 585, and cases cited therein.

The equitable tradition of vacatur rests upon the premise that a party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance or the unilateral action of the party who prevailed below, "ought not in fairness be forced to acquiesce in the judgment". Id. at 391. Accord United States v. Hamburg-Amerikanische Packetfahrt-Actien Gessellschaft, 239 U.S. 466, 477-8 (1916). C.W. and her attorneys were powerless to protect her from the unilateral action of the Respondent which caused her to be sterilized prior to the Court's disposition of the Petition for Writ of Certiorari. The constitutionality of that sterilization, however, was still being contested at the time the procedure was performed, and was not put to rest by the performance of the procedure.

The Court has utilized vacatur where it is "most consonant to justice in view of the conditions and circumstances of the particular case". Id. at 477. It is especially appropriate in a case such as this one, in which C.W. had no control over the unilateral action of the Respondent which caused the case to become moot. United States Bancorp Mortgage Co. v. Bonner Mall

Partnership, ___ U.S. ___, 115 S. Ct. 386 (1994). Through her counsel and Guardian Ad Litem, she did all that could be done to prevent the case from becoming moot and to move the appeal forward. C.W., who is unable to comprehend the issue at hand, was unaware of the implications of the surgery to which she was subjected and incapable of granting or witholding consent on her own. The disposition of the sensitive and important constitutional issues implicated in her case should not be permitted to rest upon unilateral action of a single individual intent upon evading this Court's review.

WHEREFORE, C.W., through her undersigned counsel and Guardian Ad Litem, respectfully suggests that the issues presented in her Petition for Writ of Certiorari are moot. Should the Court determine that the case is moot, C.W. respectfully requests that the judgment below be vacated and the case dismissed.

Respectfully submitted,

LORALYN McKINLEY
Guardian Ad Litem for C.W.
(Counsel of Record)

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January 17, 1995

William K. Suter
Clerk, United States Supreme Court
One First Street, N.E.
Washington, D.C. 20543

RE: C.W., By Her Guardian Ad Litem,
Loralyn McKinley, Esquire v.
Delores Wasiek, No. 94-892

Dear Mr. Suter:

Enclosed for filing please find an original and twelve documents entitled Suggestion of Mootness and Request for Vacatur. Also enclosed is Proof of Service upon counsel for the Respondent.

Very truly yours,

Loralyn McKinley

Loralyn McKinley

cc: Marta Engdahl, Esquire
Matthew M. Strickler, Esquire
Leslie H. Smith, Esquire

No. 94-892

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

C.W., By Her Guardian Ad Litem,
Loralyn McKinley, Esquire, Petitioner,

v.

Dolores Wasiek, Respondent

On Petition for a Writ of Certiorari
To the Superior Court of Pennsylvania

PROOF OF SERVICE

I hereby certify that pursuant to Rule 29.3 of the Rules of the Supreme Court of the United States, I have served three copies of the Suggestion of Mootness and Request for Vacatur by first class United States mail, upon counsel for respondent as follows:

Marta Engdahl, Esquire
P. O. Box 6994
Charlottesville, VA 22906
(804) 984-1787

I further certify that all parties entitled to be served with a copy of this motion have been served.

Loralyn McKinley

LORALYN McKINLEY
Counsel of Record

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DATED: January 17, 1995

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